To Serve and Strengthen Agriculture
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November 8, 2010

Mr. J. Charles Fox, Senior Advisor
Water Docket
United State Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Docket ID No. EPA-R03-OW-2010-0736

Dear Mr. Fox,

New York Farm Bureau (NYFB) appreciates the ability to provide comments on the Draft Chesapeake Bay Total Maximum Daily Load (TMDL). As the largest general farm organization in New York State, our family farm members, many of whom own and operate farms throughout the Upper Susquehanna Watershed, have a significant interest in any efforts and actions that impact the environmental, economic and social sustainability of the Upper Susquehanna. Continually improving water quality within the watershed, and thereby the Chesapeake Bay, is a paramount priority of New York farmers. We support the Environmental Protection Agency's intent of improving water quality in the Chesapeake Bay and throughout the Bay Watershed.

Top-Down Regulation Will Not Produce On-the-Ground Results
While the intent of cleaner water throughout the Chesapeake Bay Watershed is admirable, NYFB is disheartened about the priority emphasis on top-down regulation and enforcement the Environmental Protection Agency (EPA) has taken with the draft TMDL. We are further disappointed about EPA's overall tenor in feedback to the NYS Department of Environmental Conservation's (DEC) draft Watershed Implementation Plan (WIP) and TMDL discussions regarding New York agriculture, particularly animal agriculture, in New York's portion of the Chesapeake Bay Watershed. While agriculture does indeed have a role in further improving water quality, New York's family farms have already undertaken significant efforts to achieve quantifiable results in water quality improvement. The draft TMDL ignores these efforts and the existing mechanisms that have achieved this reduction, and instead focuses on a draconian regulatory approach that demonstrates a lack of understanding about achieving agricultural stewardship.

Clean water is a priority of New York farmers, who have worked for many years to protect the state's water resources under the most progressive water quality standards in the country. For over a decade our larger livestock farms have implemented one of the most comprehensive water

quality protection programs in the nation. These efforts were moved forward by the agricultural industry. In fact, it was New York farmers that first requested the development of a CAFO general permit by the DEC. Today these efforts continue forward with farmers spending significant resources to install and establish environmental best management practices (BMPs). These efforts have not just been undertaken by large livestock farms, but also by smaller farms as well. Under New York's Agricultural Environmental Management (AEM) programs, thousands of smaller farms within the Chesapeake Bay Watershed and across the state are implementing important environmental BMPs to improve water quality. Indeed New York farms of all sizes continually request more funding than is made available from federal and state grants to install water quality protection BMPs.

The key to both New York's successful regulatory program and voluntary program is a collaborative effort that emphasizes sound science above traditional regulatory approaches, strong, local technical assistance and an engaging approach that achieves farmer support and long-term commitment to quality environmental protection. This collaborative approach is a direct result of the strong relationships that have been established by all stakeholders including DEC, the NYS Department of Agriculture & Markets and NYS State Soil & Water Conservation Committee, USDA-NRCS, Upper Susquehanna Coalition, Cornell University, farm groups, including NYFB, and non-farm environmental groups. The key to engaging agriculture to strengthen water quality standards is to work with farmers, not against them.

You Can't Clean Water That Is Already Clean

We further urge the EPA to revise New York's Chesapeake Bay TMDL allocation to a realistic and attainable standard that does not require the severe actions of drastic loss of farms, businesses and depopulation in order to move New York's currently clean water to pristine quality water. New York's water has a very low nutrient content because the watershed area is largely forested (70%), has a decreasing population, practices low intensity agriculture with a large land base and implements progressive natural resource management programs. Water quality chemistry data for the Susquehanna River from the United State Geological Survey confirms the water leaving New York for the Chesapeake Bay is clean and already meets Bay water quality specifications required by EPA's TMDL.

In effect, EPA is forcing New York to provide nutrient reductions that can only be accomplished by removing farms and population from an area that is already 70% forested. New York's watershed population has already decreased its environmental footprint through attrition and stagnant growth at an estimated 600,000 over the past ten years while the downstream Bay states have grown by 600,000 every four years. The other Bay states are not being required to make such drastic source reductions that will transform their vibrant communities and working landscapes into a green space for the Chesapeake Bay.

Fairness and Parity in New York's TMDL Allocation

While EPA's Chesapeake Bay Program model has determined what the watershed's total "pollution diet" should be, the individual state TMDL allocations have been subjective policy decisions that do not accurately and adequately reflect New York's environmental achievements, existing high water quality and should be more proportionate in accordance with science.

In contrast to other Bay watershed states, New York's BMPs and certified nutrient management plans (CNMPs) have greater efficacy and impact because they are already utilizing advanced agronomic science in their nutrient management efforts and working off of an elevated standard of water quality protection. For example, New York is nutrient deficient and maintains extensive erosion control because of its progressive CAFO permit program. No other Bay state has accomplished this through their state nutrient management program. New York's CAFO program has been designed with the needed flexibility and rigor to protect water quality while adopting better sciences and management approaches in nutrient planning both in the field and on the farmstead.

For this reason, NYFB strongly objects to detailed federal CAFO regulatory requirements that do not take into account geographic and farmstead specific differences, creating significantly more burden on regulated farms and reducing environmental effectiveness. For example, EPA's CAFO regulations drastically increase paperwork burdens on farms and state regulatory agencies while actually preventing the spreading of manure over a larger number of acres. Given this track record, instilling new planning requirements on a federal basis would not be productive given the vast differences in soil types, contours and climate that exist throughout the Chesapeake Bay Watershed.

Similarly, New York's TMDL does not adequately recognize the substantial investment of time, staff, funding and business practices that are dedicated exclusively to environmental conservation efforts in the Bay watershed over the past decade. New York's farm families are proud caretakers of their land and natural resources and pass on these ideals of conservation and stewardship along with their love for agriculture when transitioning their farm businesses from one generation to the next.

EPA Should Accept NY's Watershed Implementation Plan

NYFB urges EPA to accept DEC's WIP which is an aggressive, achievable, stakeholder driven plan which provides adequate assurances of New York's ability to achieve stated nutrient reductions. Particularly, EPA should adopt the model refinements recommended by the DEC in their draft WIP which reflect the real-world practice and impact of New York's BMPs. Through experience and academic research, New York's BMPs symbiotically work with the seasonality, soil types and topography that is unique to New York in order to maximize environmental effectiveness.

It is critical that when discussing nutrient management planning, EPA consider geographic and climatic differences within the watershed. This is particularly true when considering restrictions on winter spreading and the establishment of cover crops. There is a difference, for example, in the number of growing degree days in Maryland and New York. This creates a situation where New York farms would feel a greater impact on their operations because of restricted winter manure spreading. It also means New York farms have a more limited time between harvest and winter weather in which to plant cover crops. Rather than establish specific BMPs in regulations, each state should have the flexibility to focus on the installation of BMPs that are geographically and climatically practical and appropriate.

For this reason, New York Farm Bureau strongly opposes the banning of winter manure spreading. Small farms cannot afford the immense capital cost of installing manure storages. It is much more cost effective for both farms and taxpayers to instead utilize science-based nutrient management planning to identify appropriate, low-risk fields for winter manure spreading.

Further, several NRCS definitions which EPA's model employs does not represent the full environmental value New York's BMPs bring to the watershed, such as precision feeding and prescribed grazing. These small deficiencies and programmatic gaps that the model does not account for aggregates into a large sum that New York agriculture is unfairly being asked to accommodate through further source reductions.

Substantial Federal Funding Needed for Compliance

New York's farm families need more than cost share support from EPA's TMDL implementation efforts. Forecasted federal funding is inadequate when compared with the total potential cost of $350 million for TMDL compliance for New York agriculture with no availability from the State to close funding gaps. In 2011, $150 million in 2008 Farm Bill funding has been dedicated for Chesapeake Bay restoration efforts for cost share projects – which means $150 million must materialize from farms and other source sectors in order to secure such federal funding. Especially in the current economy, the farm community cannot absorb additional regulatory costs which do not contribute to sustainability or profitability.

The most important priority in any TMDL effort is increasing resources available to the farm community. This includes funding for on-farm BMP implementation, strengthening of local technical resources, such as local soil & water conservation districts, and increased applied research funding.

Every year New York farmers request significantly more funds to install BMPs within the Upper Susquehanna Watershed than are made available. During the past round of funding from federal and state sources the total amount of oversubscription exceeded $8 million. Farms want to do more to protect water quality, but they need help, particularly from those entities gaining economic and social advantages from a cleaner Chesapeake Bay to accomplish these goals.

What is absolutely critical to ensuring water quality improvement is that farms have access to the technical resources necessary to adopt and implement the latest in water quality protection management practices. In New York, local soil & water districts within the Upper Susquehanna provide these valuable resources. Additional support is needed to support the work of these dedicated entities.

Farmers continually focus on improving their farm operations, including on-farm environmental management. Because of this continual desire to improve, any strategy for addressing water quality in the Chesapeake Bay Watershed needs to include efforts that expand our applied environmental knowledge base. Support for evaluating better system feedback through data collection as well as improved processes through increased research funding is critical if we want to effectively increase water quality.

New York Farm Bureau again appreciates the opportunity to provide comment on the draft Chesapeake Bay TMDL. We look forward to working with EPA and other federal agencies as this initiative moves forward. Please do not hesitate to contact us with any questions you may have.

Sincerely,

Julie C. Suarez
Director of Public Policy